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**Mandated areas**

## Information received from the United Nations system

## World Intellectual Property Organization

*Summary*

The information provided by the World Intellectual Property Organization (WIPO) in the present document summarizes and updates the information provided for the first session of the Permanent Forum on Indigenous Issues (13 to 24 May 2002), which is contained in document E/CN.19/2002/2/Add.1.

In the present document, WIPO provides information on recent progress made in respect of intellectual property and access to genetic resources, benefit-sharing and the protection of biodiversity-related traditional knowledge and of traditional cultural expressions, issues that the Permanent Forum on Indigenous Issues referred to at its first session. In addition, information is provided on the participation of indigenous peoples and local communities in the work of WIPO, including the participation of the Permanent Forum, and discussions that are under way to further enhance such involvement.

* E/C.19/2003/1.

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# I. Introduction

1. The World Intellectual Property Organization (WIPO) is one of the specialized agencies of the United Nations system of organizations. Its mandate is to promote the protection of intellectual property throughout the world through cooperation among States and, as appropriate, in collaboration with other international organizations. "Intellectual property" is defined in article 2 (viii) of the 1967 Convention establishing the World Intellectual Property Organization as including rights relating to:

- literary, artistic and scientific works
- performances of performing artists, sound recordings and broadcasts
- inventions in all fields of human endeavour
- scientific discoveries
- industrial designs
- trademarks, service marks and commercial names and designations
- protection against unfair competition
- all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

2. WIPO currently has 179 member States. Its programme of activities and budget are determined for two-year periods by its member States. Its headquarters are in Geneva.

# II. Intellectual property and genetic resources, traditional knowledge and traditional cultural expressions

3. Although WIPO has been active in the field of traditional cultural expressions (or "expressions of folklore") since the 1960s, it commenced a new set of activities in 1998 designed to explore the relationship between intellectual property and (a) access to genetic resources and benefit-sharing; (b) the protection of traditional knowledge related to biodiversity, agriculture, medicine and other such technical fields; and (c) the protection of traditional cultural expressions.

4. Between 1998 and 2000, WIPO organized, often with indigenous peoples and organizations, a series of fact-finding missions, consultations, studies, round tables and projects. These are more fully reported on in document E/CN.19/2002/2/Add.1.

5. In 2000 and 2001, WIPO's work moved beyond issue identification to a phase of training, awareness-raising and testing practical solutions, and included activities such as the development of practical training and information materials, including an online distance learning course; practical training workshops for indigenous peoples, local communities and others; and the publication of practical studies of actual cases in which indigenous Australians have sought to use intellectual property rights to protect their traditional cultural expressions. Those studies, entitled Minding Culture — Case Studies on Intellectual Property and Traditional Cultural Expressions, are available on the WIPO web site, at http://www.wipo.int/globalissues/studies/cultural/minding-culture/index.html.

# III. Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore

6. In late 2000, the member States of WIPO established the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore for the purpose of member State discussions on these subjects. The working documents of the Intergovernmental Committee can be obtained from the Secretariat and are also available on the WIPO web site, at http://www.wipo.int/globalissues/igc/documents/index.html.

7. The Intergovernmental Committee has met four times so far. It has made substantial progress in addressing both policy and practical linkages between the intellectual property system and the concerns and needs of holders of traditional knowledge and custodians of traditional cultures. With the guidance of the Committee, the Secretariat has undertaken a series of detailed analytical studies, based on extensive surveys of national experience in this area, to form the basis for international policy debate, and has also developed practical tools aimed at enhancing the intellectual property interests of holders of traditional knowledge, traditional cultural expressions and genetic resources.

8. The Committee's sessions are attended by more than 400 representatives of member States and intergovernmental and non-governmental organizations.

## A. Traditional cultural expressions (folklore)

9. The Committee has considered detailed secretariat analysis of the use of existing intellectual property and sui generis approaches for the legal protection of traditional cultural expressions (see documents WIPO/GRKTF/IC/3/10 and WIPO/GRTKF/IC/4/3). This analysis was based on the national experiences of 66 member States, surveyed through a questionnaire, and a set of case studies. In addition to the Minding Culture studies referred to in paragraph 5 above, WIPO has also published a study of practical experiences in India, Indonesia, and the Philippines. The Committee has received detailed briefings by New Zealand, Nigeria, Panama, the Russian Federation, Tunisia and the Secretariat of the Pacific Community on their recent legislative experiences with the legal protection of traditional cultural expressions.

10. At its fifth session in July 2003, the Committee will consider whether it should develop model provisions for national laws, taking into account model provisions developed in 1982 by WIPO and the United Nations Educational, Scientific and Cultural Organization, and the development of elements of an international sui generis system for the protection of traditional cultural expressions.

11. WIPO is also, with the endorsement of the Committee, preparing a practical guide on the legal protection of traditional cultural expressions and undertaking a practical study of the relationship between intellectual property rights and customary and indigenous systems of protection.

## B. Traditional knowledge

12. The Committee has concentrated on both the positive protection of traditional knowledge, or the use of existing legal mechanisms to protect and promote it, and on defensive protection, or measures to ensure that other parties do not obtain intellectual property rights over pre-existing traditional knowledge. The discussion on positive protection has been based on secretariat studies of the operational definitions relevant to traditional knowledge (document WIPO/GRTKF/IC/3/9); a review of existing national systems of intellectual property protection for traditional knowledge (documents WIPO/GRTKF/IC/3/7 and WIPO/GRTKF/IC/4/7); and an analysis of the elements for a possible sui generis system for the protection of traditional knowledge (documents WIPO/GRTKF/IC/3/8 and WIPO/GRTKF/IC/4/8). The Committee has commissioned a composite study by the secretariat drawing together this material as the basis for future policy debate.

13. Practical steps towards defensive protection of traditional knowledge include consideration of how to ensure patent examiners have practical access to traditional knowledge-related documentation that is already disclosed and has been made available to the public, so as to ensure that patent claims that include existing traditional knowledge in their scope are not allowed. At the request of the Committee, WIPO has:

- drawn up inventories of traditional knowledge-related periodicals and online databases for use by patent examiners in searching for relevant prior art
- launched an online portal of traditional knowledge databases, which provides links to traditional knowledge databases, including those in China and India, to facilitate the study of intellectual property issues related to traditional knowledge databases
- worked with traditional knowledge holders to develop an intellectual property management toolkit to ensure that the interests of holders of traditional knowledge are safeguarded when their traditional knowledge is documented.

## C. Genetic resources

14. The Committee has focused on contractual agreements for access to genetic resources, and legislative, administrative and policy measures to regulate access to genetic resources, and has considered how the relationship between genetic resources and associated intellectual property rights has been dealt with in practice.

15. WIPO has launched a pilot version of an online, publicly accessible and searchable database of biodiversity-related access and benefit-sharing agreements, with a particular emphasis on the intellectual property aspects of such agreements and the choices made in using intellectual property rights to share the benefits associated with access to genetic resources (see http://www.wipo.int/globalissues/questionnaires/ic-q2/index.html).

16. At the request of the Conference of the Parties to the Convention on Biological Diversity, WIPO has also commenced the development of a technical study (WIPO/GRTKF/IC/4/11) on methods consistent with obligations in treaties administered by WIPO for requiring the disclosure within patent applications of information concerning the source of genetic resources and traditional knowledge,

and evidence of prior informed consent. Based on a questionnaire survey of member States (WIPO/GRTKF/IC/Q.3), this study is due to be submitted to the Conference of the Parties in 2004. WIPO and the United Nations Environment Programme released a CD-ROM for the 2002 meeting of the Conference of the Parties providing case studies on the role of intellectual property rights in benefit-sharing.

## IV. Participation by indigenous peoples and local communities in the work of the World Intellectual Property Organization

17. Reflecting the diverse range of interests involved in this work, more than 70 ad hoc non-governmental organizations observers have been admitted to participation in the Committee's work, and the WIPO General Assembly has called for steps to enhance the involvement of indigenous and local communities in the Committee's work, including through cooperation with the Permanent Forum on Indigenous Issues.

18. Although as a subsidiary body of the Economic and Social Council the Permanent Forum is entitled to participate in Committee sessions, at the request of the WIPO General Assembly a specific invitation to participate in the Committee's fourth session was addressed to the Forum. This was also proposed by the Permanent Forum at its first session. The Forum participated in the session, and the Committee is continuing to consider various options and mechanisms for further improving ways in which indigenous and local communities can be involved in WIPO's work on these issues.

19. While the Committee forms the centrepiece of WIPO's work in this area, WIPO continues to expand its range of consultations and policy dialogue on these subjects, in particular through national and regional workshops and expert meetings. These are intended to facilitate and support the input of State, indigenous and local communities and non-governmental organizations into the work of the Committee, and to promote regional dialogue and networking between key stakeholders.

20. The following workshops have been held to date:

- WIPO Workshop on Intellectual Property and Traditional Knowledge, Paramaribo, Suriname, 21 and 22 May 2001
- WIPO Workshop on Intellectual Property and Traditional Knowledge, Kingston, Jamaica, 24 and 25 May 2001
- WIPO International Seminar on the Preservation, Promotion and Protection of Folklore and Traditional Knowledge, São Luís de Maranhão, Brazil, 11 to 13 March 2002
- Subregional Workshop on Intellectual Property, Genetic Resources and Traditional Knowledge, Brisbane, Australia, 25 to 27 June 2001
- Regional Meeting on Intellectual Property and the Protection of Expressions of Folklore and Traditional Knowledge for the English-speaking countries in Africa, Lusaka, Zambia, from 8 to 10 May 2002
- WIPO-African Intellectual Property Organization Regional Symposium on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, Abidjan, Côte d'Ivoire, 8 to 10 April 2002

- WIPO Expert Group Meeting on Intellectual Property and the Protection of Expressions of Folklore and Traditional Knowledge, Addis Ababa, Ethiopia, 13 and 14 May 2002
- WIPO Workshop on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore for Nordic Countries, Sigtuna, Sweden, 6 to 8 November 2002
- WIPO Asia-Pacific Regional Seminar on Intellectual Property Rights, Genetic Resources, Traditional Knowledge and Folklore, Cochin, India, 11 to 13 November 2002.

21. Similar workshops and seminars are planned for 2003. A feature of each of these meetings and associated consultations has been the active participation of many representatives of indigenous and local communities, including as speakers and presenters.

## Accreditation for participation in sessions of the Intergovernmental Committee

22. Decisions on accreditation are not made by the WIPO secretariat, but by the member States at the beginning of the sessions of the Intergovernmental Committee. In order to enable Member States to take a decision on the accreditation of an organization, organizations requesting ad hoc observer status with the Committee should provide WIPO with a brief description of the organization, including its full name, main objectives, full address and contact details, and the name of the country or countries in which it is primarily active. It is requested that this description be no longer than 500 words. A particular description of how the work of the organization relates to intellectual property protection would be helpful. This description can be sent to the WIPO secretariat either by mail or by e-mail (susanna.chung@wipo.int). Requests for accreditation for consideration at the fifth session of the Committee (7-15 July 2003) should be received by the WIPO secretariat before 30 May 2003.